

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

STATE OF ALABAMA, *et al.*,)
v.) Case No. 2:18-cv-00772-RDP
UNITED STATES DEPARTMENT OF)
COMMERCE, *et al.*,)
Defendants,)
and)
DIANA MARTINEZ, *et al.*; COUNTY OF)
SANTA CLARA, CALIFORNIA, *et al.*; and)
STATE OF NEW YORK, *et al.*,)
Intervenor-Defendants.)

DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT

Defendants respond to the allegations in Plaintiffs' First Amended Complaint for Declaratory Relief (ECF No. 112) in the correspondingly numbered paragraphs below.

INTRODUCTION

1. The first sentence sets forth Plaintiffs' characterization of this action and legal conclusions, to which no response is required. The second sentence is a characterization of the Residence Rule, to which Defendants refer for its complete and accurate contents. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the final sentence.

2. This paragraph sets forth Plaintiffs' characterization of this action and legal

conclusions, to which no response is required. Defendants lack knowledge or information sufficient to form a belief as to the truth of any remaining factual allegations.

3. This paragraph sets forth Plaintiffs' characterization of this action and legal conclusions, to which no response is required. Defendants lack knowledge or information sufficient to form a belief as to the truth of any remaining factual allegations.

4. This paragraph sets forth Plaintiffs' characterization of this action and legal conclusions, to which no response is required.

5. This paragraph refers to the Residence Rule and other legal authorities, to which Defendants refer for their complete and accurate contents, and sets forth Plaintiffs' characterization of this action and legal conclusions, to which no response is required.

JURISDICTION AND VENUE

6. This paragraph sets forth legal conclusions, to which no response is required.

7. This paragraph sets forth Plaintiffs' characterization of this action and legal conclusions, to which no response is required.

8. This paragraph sets forth Plaintiffs' characterization of this action and legal conclusions, to which no response is required.

9. This paragraph sets forth Plaintiffs' characterization of this action, to which no response is required.

THE PARTIES

1. Defendants admit the allegations contained in the first sentence. The second sentence sets forth legal conclusions to which no response is required.¹

¹ The numbering of the paragraphs in Plaintiffs' Amended Complaint reset at the beginning of the section entitled "THE PARTIES."

2. Defendants admit the allegations contained in the first sentence. Defendants admit that Plaintiff Brooks currently represents Alabama's 5th Congressional District, but otherwise lack knowledge or information sufficient to form a belief regarding the remaining allegations in the second sentence. Defendants lack knowledge or information sufficient to form a belief regarding the allegations in the third sentence.

3. This paragraph sets forth legal conclusions, to which no response is required.

4. Defendants admit the allegations contained in the first sentence. The second and third sentences set forth legal conclusions, to which no response is required. The fourth sentence sets forth Plaintiffs' characterization of this action, to which no response is required.

5. This paragraph sets forth legal conclusions, to which no response is required.

6. Defendants admit the allegations contained in the first sentence. The second sentence sets forth Plaintiff's characterization of this action, to which no response is required.

ALLEGATIONS

7. This paragraph contains citations to authority, to which Defendants refer for their complete and accurate contents, or sets forth legal conclusions, to which no response is required.

8. This paragraph contains citations to authority, to which Defendants refer for their complete and accurate contents, or sets forth legal conclusions, to which no response is required.

9. This paragraph contains citations to authority, to which Defendants refer for their complete and accurate contents, or sets forth legal conclusions, to which no response is required.

10. This paragraph contains citations to authority, to which Defendants refer for their complete and accurate contents, or sets forth legal conclusions, to which no response is required.

11. This paragraph sets forth legal conclusions, to which no response is required.

12. Defendants deny the allegations contained in the first sentence, except to admit

that, to attempt to enable a person-by-person count, among other things the Census Bureau sends out a questionnaire to households in the United States. The second sentence contains a citation to authority, to which Defendants refer for its complete and accurate contents. Defendants deny any remaining allegations in the second sentence. Defendants deny the allegations contained in the third sentence, except to admit that, among other things, the Census Bureau counts responses from every household as part of its effort to determine the population of the states.

13. This paragraph contains a citation to authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

14. This paragraph contains a citation to authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

15. This paragraph contains a citation to authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

16. This paragraph sets forth legal conclusions, to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation regarding how “[t]he apportionment population of a state generally is defined.”

17. The first sentence sets forth legal conclusions, to which no response is required, or purports to describe a process by which residents of a state provide information to the Census Bureau, to which Defendants deny the allegations, except to admit that the described process is one of many ways in which a resident may be counted. The second sentence contains a citation to authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

18. Defendants deny the allegation in the first sentence that Census Bureau

regulations govern the conduct of the 2020 Census. The remainder of this paragraph contains a citation to authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

19. Defendants deny the allegations contained in the first sentence, except to admit that some citizens of foreign countries are counted in the census tally used for apportionment purposes regardless of whether they are legal permanent residents of the United States. The second sentence describes the record of comments for the 2020 Residence Rule, to which Defendants refer for its complete and accurate contents.

20. Defendants deny that the Secretary of Commerce will use “estimates.” The remainder of this paragraph contains a citation to authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

21. Defendants deny that the Secretary of Commerce will deliver “estimates.” The remainder of this paragraph contains a citation to authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

22. This paragraph sets forth legal conclusions, to which no response is required.

23. This paragraph sets forth legal conclusions, to which no response is required.

24. Denied, except to admit that the memorandum announcing the decision to ask a question regarding citizenship status on the 2020 Census is dated March 26, 2018.

25. This paragraph characterizes the Residence Rule, to which Defendants refer for its complete and accurate contents. To the extent a response is otherwise required, Defendants deny the allegations, except to admit that neither the Department of Commerce nor the Census Bureau has announced a decision to add a question to determine whether a Census respondent and his dependents have legal permanent resident status in the United States.

26. Admitted.

27. This paragraph contains a citation to authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

28. This paragraph characterizes the Residence Rule, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

29. The first three sentences and the last sentence are vague and undefined, thus precluding a fair response by Defendants. The fourth and fifth sentences cite documents, to which Defendants refer for their complete and accurate contents. Defendants deny any remaining allegations in this paragraph.

30. The first and third sentences are vague and undefined, thus precluding a fair response by Defendants. The remainder of this paragraph cites documents, to which Defendants refer for their complete and accurate contents. Defendants deny any remaining allegations in this paragraph.

31. Denied, except to admit that, in previous censuses, the Census Bureau has not sought to exclude illegal aliens residing in each state in enumerating the number of persons in each state, that apportionment was based on the total resident population of each state, and that the total resident population of each state has included illegal aliens.

32. Defendants deny the allegations in the first sentence, except to admit that a set number of House seats and Electoral College votes are reapportioned amongst the states at the end of every decennial Census. Defendants admit the allegations contained in the second sentence. The third sentence cites legal authority, to which Defendants refer for its complete and accurate contents, and otherwise deny the allegations contained in the third sentence. Defendants deny the allegations contained in the fourth sentence, except to admit that census

figures are used for congressional apportionment.

33. The allegations contained in this paragraph are vague and undefined, thus precluding a fair response by Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

34. This paragraph cites a document, to which Defendants refers for its complete and accurate contents. Defendants deny any remaining allegations in this paragraph.

35. This paragraph cites a document, to which Defendants refer for its complete and accurate contents. Defendants deny any remaining allegations in this paragraph.

36. This paragraph cites documents, to which Defendants refer for their complete and accurate contents. Defendants deny any remaining allegations in this paragraph.

37. This paragraph sets forth legal conclusions, to which no response is required. Defendants deny any remaining allegations in this paragraph.

38. This paragraph sets forth legal conclusions, to which no response is required. Defendants deny any remaining allegations in this paragraph.

39. This paragraph cites a document, to which Defendants refer for its complete and accurate contents. Defendants deny any remaining allegations in this paragraph.

40. This paragraph cites a document, to which Defendants refer for its complete and accurate contents. Defendants deny any remaining allegations in this paragraph.

41. This paragraph is vague and undefined, thus precluding a fair response by Defendants.

42. The first two sentences cite a document, to which Defendants refer for its complete and accurate contents. Defendants lack knowledge or information sufficient to form a

belief as to the truth of the remaining allegations in this paragraph.

43. Defendants admit that the 2000 apportionment resulted in a change of 12 congressional seats and Electoral College votes, but otherwise lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

44. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

45. The first and last sentences cite a document, to which Defendants refer for its complete and accurate contents. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

46. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

47. This paragraph cites a document, to which Defendants refer for its complete and accurate contents. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

48. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

49. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

50. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

51. Denied.

52. Admitted.

53. Admitted.

54. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

55. Admitted.

56. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

57. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

58. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

59. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

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61. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

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64. This paragraph sets forth legal conclusions, to which no response is required. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

65. Defendants lack knowledge or information sufficient to form a belief as to the

truth of the allegations in this paragraph.

66. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

67. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

68. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

69. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

70. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

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72. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

73. This paragraph sets forth legal conclusions, to which no response is required.

74. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents.

75. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

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and accurate contents, or sets forth legal conclusions, to which no response is required.

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79. This paragraph sets forth legal conclusions, to which no response is required.

80. This paragraph cites legal authorities, to which Defendants refer for their complete and accurate contents, or sets forth legal conclusions, to which no response is required.

81. This paragraph is vague and undefined, thus precluding a fair response, or sets forth legal conclusions, to which no response is required.

82. This paragraph sets forth legal conclusions, to which no response is required.

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86. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

87. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents.

88. This paragraph is vague and undefined, thus precluding a fair response, or sets forth legal conclusions, to which no response is required. Defendants lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations in this paragraph.

89. This paragraph cites a document, to which Defendants refer for its complete and accurate contents. Defendants lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations in this paragraph.

90. This paragraph is vague and undefined, thus precluding a fair response, or sets

forth legal conclusions, to which no response is required. Defendants lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations in this paragraph.

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96. This paragraph sets forth legal conclusions, to which no response is required.

97. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

98. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

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100. This paragraph is vague and undefined, thus precluding a fair response, or sets forth legal conclusions, to which no response is required.

101. This paragraph is vague and undefined, thus precluding a fair response, or sets forth legal conclusions, to which no response is required.

102. This paragraph sets forth legal conclusions, to which no response is required. Defendants lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations in this paragraph.

103. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

104. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

105. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

106. This paragraph sets forth legal conclusions, to which no response is required. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

107. This paragraph sets forth legal conclusions, to which no response is required.

108. This paragraph sets forth legal conclusions, to which no response is required.

109. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

110. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

111. This paragraph cites legal authorities, to which Defendants refer for their

complete and accurate contents, or sets forth legal conclusions, to which no response is required.

Defendants deny any remaining allegations in this paragraph.

112. This paragraph cites legal authorities, to which Defendants refer for their complete and accurate contents, or sets forth legal conclusions, to which no response is required. Defendants deny any remaining allegations in this paragraph.

113. This paragraph cites legal authorities, to which Defendants refer for their complete and accurate contents, or sets forth legal conclusions, to which no response is required. Defendants deny any remaining allegations in this paragraph.

114. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required. Defendants deny any remaining allegations in this paragraph.

115. This paragraph cites legal authorities, to which Defendants refer for their complete and accurate contents, or sets forth legal conclusions, to which no response is required. Defendants deny any remaining allegations in this paragraph.

116. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences. The third sentence sets forth a legal conclusion, to which no response is required.

117. This paragraph refers to legal authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required. Defendants deny any remaining allegations in this paragraph.

118. This paragraph sets forth legal conclusions, to which no response is required.

119. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

120. This paragraph cites legal authorities, to which Defendants refer for their complete and accurate contents.

121. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents, or sets forth a legal conclusion, to which no response is required.

122. This paragraph cites legal authorities, to which Defendants refer for their complete and accurate contents, or sets forth legal conclusions, to which no response is required.

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124. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

125. This paragraph sets forth legal conclusions, to which no response is required.

FIRST CAUSE OF ACTION

126. Defendants incorporate by reference their responses in the preceding paragraphs.

127. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents.

128. This paragraph sets forth legal conclusions, to which no response is required.

SECOND CAUSE OF ACTION

129. Defendants incorporate by reference their responses in the preceding paragraphs.

130. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents.

131. This paragraph sets forth legal conclusions, to which no response is required.

THIRD CAUSE OF ACTION

132. Defendants incorporate by reference their responses in the preceding paragraphs.

133. This paragraph cites legal authorities, to which Defendants refer for their complete and accurate contents.

134. This paragraph sets forth legal conclusions, to which no response is required.

FOURTH CAUSE OF ACTION

135. Defendants incorporate by reference their responses in the preceding paragraphs.

136. This paragraph cites legal authority, to which Defendant refers for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

137. This paragraph cites legal authority, to which Defendants refer for its complete and accurate contents, or sets forth legal conclusions, to which no response is required. Defendants deny any remaining allegations in this paragraph.

138. This paragraph sets forth legal conclusions, to which no response is required.

FIFTH CAUSE OF ACTION

139. Defendants incorporate by reference their responses in the preceding paragraphs.

140. This paragraph cites legal authority, to which Defendant refers for its complete and accurate contents, or sets forth legal conclusions, to which no response is required.

141. This paragraph sets forth legal conclusions, to which no response is required.

142. This paragraph sets forth legal conclusions, to which no response is required.

143. This paragraph sets forth legal conclusions, to which no response is required.

PRAYER FOR RELIEF

144. This paragraph sets forth Plaintiffs' Prayer for Relief, to which no response is required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to any relief.

Each and every allegation in the First Amended Complaint not expressly admitted or

denied is hereby denied.

FIRST AFFIRMATIVE DEFENSE: WAIVER

Plaintiffs' Administrative Procedure Act claims are waived for failure to present them to the Commerce Department or Census Bureau during the public comment period for the proposed Residence Rule.

Having fully answered Plaintiffs' First Amended Complaint, Defendants respectfully request that the Court enter judgment dismissing this action and awarding Defendants costs and such other relief as the Court may deem appropriate.

Dated: October 1, 2019

Respectfully submitted,

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Assistant Attorney General

JOHN R. GRIFFITHS
Director, Federal Programs Branch

CARLOTTA P. WELLS
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/s/ Brad P. Rosenberg
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties in this litigation.

/s/ Brad P. Rosenberg
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